

## MINUTES OF THE REGULAR MEETING OF JANUARY 26, 1995

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 26, 1995, at 7:30 PM in Room 115, of the Courthouse, Georgetown, Delaware with the following present:

Mr. Allen, Mr. Lynch, Mr. Phillips, Mr. Ralph, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Ms. Mowbray - Zoning Inspector II.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the minutes of January 12, 1995, as circulated.

### II. PUBLIC HEARINGS

#### 1. RE: C/Z #1250--Gordon Berl

Gordon Berl and William Mann, Land Surveyor, were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to MR Medium Density Residential in Lewes and Rehoboth Hundred, located on the northeast side of Route 269A, 306 feet northwest of Route 18, to be located on a parcel containing 3.92 acres more or less.

Mr. Schrader asked the Commission if they would consider both C/Z #1250 and C/U #1100 at the same time since they were based on the same site. There was a consensus of the Commission to consider both applications during one public hearing.

Mr. Lank summarized comments received from the Delaware Department of Transportation (DelDOT), the Sussex Conservation District, and the County Engineering Department.

Mr. Berl advised the Commission that his concept is to establish a moderately priced two story townhome project, landscaping, and appropriate parking, that the homes would be priced in the \$100,000 to \$125,000 range, that first time buyers are anticipated, that he is a home builder, that the homes would contain 1,200 to 1,400 square feet with a single car garage, that the site will be served by public sewer, that a community water system is probable, that the homes would be an improvement to the area, that the use is a desirable use, that the site shall contain a dedicated area for a play area for children, that the site adjoins and is in close proximity to commercial areas and uses, that one entrance will be created along Road 269A, and that he has not contacted the Office of the State Fire Marshal to date.

Neal Boyle, Michael Tyler, Eric Barbye, Ron Ressler, Nina Connanda, and Mary Grace Barbye, of the twenty-two (22) parties present in opposition, spoke in opposition and expressed concerns relating to traffic, multi-family use, traffic hazards due to the close proximity to a curve in Route 18, impacts on existing traffic and truck traffic, water, sewer, storm drainage, the lack of a detailed site plan, impacts on single family homes in the area, fencing and/or privacy screening, noise, lack of compliance with the land use plan, that the use may be spot zoning, that the Town of Lewes is preparing long range planning for the area and may be impacted by the rezoning and use, that land is available in the area already zoned for the use intended, and that agricultural lands should be preserved.

Mr. Boyle submitted a petition signed by eight parties in opposition and pictures of the intersection of Route 18 and Road 269A.

Mr. Tyler submitted a letter in opposition on behalf of the Citizens Coalition.

Mr. Barbye submitted a letter in opposition from he and his wife.

William Reardon, the owner of the property, spoke in support of the application and stated that a majority of the area is utilized for doctors offices, that approximately 13 office complexes exist along Route 18, that most of the sites utilized for doctors offices were residential home sites, and that only one residential zoned and occupied lot exist adjacent to this site.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service of Route 269A may increase from a level of service A to a level of service B if the site is developed at the maximum numbers of units per acre.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are Sassafras sandy loam and Sassafras loam, that both soil types are relatively free of limitations or that the limitations are easily overcome, that the developer shall be required to follow

recommended erosion and sediment control practices during construction and to maintain vegetation after completion of any construction, that the farmland rating of the soil types is considered Prime Farmland, that no storm flood hazard area or tax ditch is affected, and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments provided by the County Engineering Department, that sufficient capacity will exist in the new West Rehoboth sanitary sewer system to serve the proposed number of units and that the Departments approval to allocate capacity to this project is based on their understanding that the Coastal Sussex Land Use Plan will allow high-density development on this parcel.

The Commission found that the applicant and his land surveyor were present and advised the Commission that the developers concept is to establish a moderately priced two story townhome project with landscaping and appropriate parking, that the homes will be priced in the \$100,000 to \$125,000 range, that first time buyers are anticipated, that the applicant is a home builder, that the homes would contain 1,200 to 1,400 square feet with a single car garage, that the site will be served by public sewer, that a community water system is probable, that the homes would be an improvement to the area, that the use is a desirable use, that the site shall contain a dedicated area for a play area for children, that the site adjoins and is in close proximity to commercial areas and uses, that one entrance will be created along Road 269A, and that he has not contacted the Office of the State Fire Marshal to date.

The Commission found that six (6) of the twenty-two (22) parties present in opposition, spoke in opposition and expressed concerns relating to traffic, multi-family use, traffic hazards due to the close proximity to a curve in Route 18, impacts on existing traffic and truck traffic, water, sewer, storm drainage, the lack of a detailed site plan, impacts on single family homes in the area, fencing and/or privacy screening, noise, lack of compliance with the land use plan, that the use may be spot zoning, that the Town of Lewes is preparing long range planning for the area and may be impacted by the rezoning and use, that land is available in the area already zoned for the use intended, and that agricultural lands should be preserved.

The Commission found that a petition signed by eight (8) parties in opposition, pictures of the intersection of Route 18 and Road 269A, and two (2) letters in opposition were submitted for the record for citizens in the area and on behalf of the Citizens Coalition.

The Commission found that the owner of the property spoke in support of the application and stated that a majority of the area is utilized for doctors offices, that approximately 13 office complexes exist along Route 18, that most of the sites utilized for doctors offices were residential home sites, and that only one residential zoned and occupied lot exist adjacent to this site.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the rezoning to MR would conform to the intent of the Coastal Sussex Land Use Plan and the intent of the Development District.

2. RE: C/U #1100--Gordon Berl

Gordon Berl and William Mann, Land Surveyor, were present on behalf of this application to consider the Conditional Use of land in an MR Medium Density Residential District in Lewes and Rehoboth Hundred for a Maximum of Forty-Seven Multi-Family Dwelling Units lying on the northeast side of Route 269A, 306 feet northwest of Route 18, on a parcel containing 3.92 acres more or less.

All comments made as a part of the record for C/Z #1250 by Commission members, staff members, the applicant and opponents are hereby made a part of the record for this application.

All Commission findings related to C/Z #1248 are made a part of the record for this application.

Motion by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County council with the recommendation that it be denied since the multi-family use requested is not in keeping with the land uses of the area or the Coastal Sussex Land Use Plan.

3. RE: C/U #1101--Melvin A. & Gloria M. Fox

Melvin and Gloria Fox, and John Brady, Attorney, were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Indian River Hundred for Toning Booths and Beauty Salon lying on the southwest side of Route 5, 1,100 feet northwest of Road 306A, on a parcel containing 13,300 square feet more or less.

Mr. Lank summarized comments received from DelDOT and the Sussex Conservation District.

Mr. Brady advised the Commission that the applicants would like to amend their application to delete the reference to a beauty salon, that the intended use is toning tables and an alpha capsule, that toning tables are passive exercise machines, that the alpha capsules are used to promote a balance of mental and physical conditioning by combining dry heat sauna, vibration massage, aromatherapy and audio/visual components, that the site should be an appropriate location for this type of use due to the large number of retired individuals in the general area, that the applicants own one (1) capsule and seven (7) toning machines, that the maximum number of customers scheduled will be five (5) at any one time, that one (1) or two (2) employees will be the maximum at any one time, that primary access to the site will be Fishermans Lane, a twenty-five (25) foot wide public street, that landscaping is proposed to screen the parking lot from view by the neighbors, that the business is planned to be open thirty-five (35) hours per week over six (6) days, that business hours are planned for 10:00 AM to 6:00 or 7:00 PM, that the owner of Wood Lane will be contacted to confirm access, that the driveway will be stone, that a new septic system has been installed, that the septic system was inspected by the State DNREC, that no one will reside on the premises, and that the applicants have no objection to business hours being restricted.

Evelyn Irwin, Christina Jackson, Debbie Gallagher, Samuel Warrington, and William Irwin spoke in support of the intended use, and advised the Commission that the tables and capsule are therapeutic for all ages, especially for the elderly, individuals suffering from arthritis and for stress reduction, that an individual will utilize one table for approximately eight (8) minutes and then rotate to another table until all seven tables have been utilized.

No parties appeared in opposition.

At the conclusion of the public hearing, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which are relatively free of limitations or that the limitations are easily overcome, that the developer shall be required to follow recommended erosion and sediment control practices and to maintain vegetation after completion of any construction, that the farmland rating of the soil type is of Statewide Importance, that no storm flood hazard area or tax ditch is affected, and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the attorney present on behalf of the applicants presented that the applicants would like to amend their application to delete the reference to a beauty salon, that the intended use is toning tables and an alpha capsule, that toning tables are passive exercise machines, that the alpha capsules are used to promote a balance of mental and physical conditioning by combining dry heat sauna, vibration massage, aromatherapy and audio/visual components, that the site should be an appropriate location for this type of use due to the large number of retired individuals in the general area, that the applicants own one (1) capsule and seven (7) toning machines, that the maximum number of customers scheduled will be five (5) at any one time, that one (1) or two (2) employees will be the maximum at any one time, that primary access to the site will be Fishermans Lane, a twenty-five (25) foot wide public street, that landscaping is proposed to screen the parking lot from view by the neighbors, that the business is planned to be open thirty-five (35) hours per week over six (6) days, that business hours are planned for 10:00 AM to 6:00 or 7:00 PM, that the owner of Wood Lane will be contacted to confirm access, that the driveway will be stone, that a new septic system has been installed, that the septic system was inspected by the State DNREC, that no one will reside on the premises, and that the applicants have no objection to business hours being restricted.

The Commission found that five (5) of the eleven (11) parties present in support of this application stated that the tables and capsule are therapeutic for all ages, especially for the elderly, individuals suffering from arthritis and for stress reduction, that an individual will utilize one table for approximately eight (8) minutes and then rotate to another table until all seven tables have been utilized.

The Commission found that no parties appeared in opposition.

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. The site plan shall be subject to review and approval by the Planning and Zoning Commission.
2. Appropriate ingress/egress shall be provided. No access shall be permitted from Route 5.
3. A minimum of eight (8) parking spaces and appropriate driveway shall be provided.
4. One unlighted sign, not exceeding 32 square feet, may be permitted.
5. Business hours shall be 10:00 AM to 7:00 PM six days per week with no Sunday hours.

#### OTHER BUSINESS

1. RE: Rehoboth Beach Outlets

Gordon Meade, Engineer, and Dave Marshka were present on behalf of this revised site plan.

The Commission reviewed a revised site plan to add an additional 33,790 square feet of outlet stores to the site plan.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a final subject to receipt of a revised entrance permit and verification from County Engineering that they have approved the use.

2. RE: 84 Limber

The Commission reviewed a site plan for a retail lumber and hardware outlet on Route 26 near Clarksville.

Motion by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the site plan as a final subject to receipt of an entrance permit from DelDOT.

3. RE: Coastal Towing

The Commission reviewed a site plan for C/U #1097 for an auto repair shop and an impound lot on the south side of Route 283.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a preliminary. Final site plan review shall be subject to receipt of appropriate agency approvals and/or permits.

4. RE: Salt Pond, Inc.

James Fuqua, Attorney, was present on behalf of this application for a setback modification on lot 181 of the Salt Pond Development.

Mr. Fuqua advised the Commission that a ten (10) foot setback from Federal Wetlands was proposed by the developer during public hearing processes for the RPC District, that the wetlands was verified and found to encroach into more of the lot than originally mapped, that the buildable area of the lot is reduced to approximately 18 feet, and request that the Commission establish a revised building restriction line on lot 181 at the Federal wetlands line.

Motion by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the request with the stipulation that the Federal wetlands line become the building restriction line and that no encroachments shall be permitted into the Federal wetlands.

5. RE: Patricia McAvoy

The Commission reviewed a minor subdivision for two (2) lots on a private road off of Route 298A.

Mr. Lank advised the Commission that the parcel fronts Hopkins Prong and shall be required to obtain a variance from the required 150 feet frontage along a water body since the lot is within a Conservation District.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the two lot subdivision in concept only. Approval to record shall be subject to review and approval of a variance by the County Board of Adjustment.

6. RE: Michael McCarthy

The Commission reviewed a minor subdivision to split 10 acres into two (2) parcels on Route 353. A 50 foot road access is proposed to be created to serve the rear parcel at the location of an existing drive.

Mr. Lank read a letter from Mellon Bank which referenced their support of the subdivision.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the subdivision in concept.

7. RE: William Derrickson

The Commission reviewed a concept to subdivide three (3) lots from a farm by creation of a 50 foot road access from Route 347. The 50 foot road access is proposed to be created at the same location as an existing drive.

There was a consensus of the Commission that the maximum number of lots that could be approved as a minor subdivision on this parcel is three lots, one of which is the farm itself.

Motion by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve a concept for the farm and two lots. Any further subdivision of the parcel shall require a major subdivision application and public hearing. All lots shall comply with requirements for lots within Conservation Districts.

IV. OLD BUSINESS

1. RE: C/U #1099--Albert Delio, Jr.

No one was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Nanticoke Hundred for Truck Tractor and Trailer Storage and Repair lying on the north side of Route 46, approximately 290 feet east of Route 516, on a parcel containing 7.12 acres more or less.

The Chairman referred back to this application, deferred on January 12, 1995.

The Commission discussed the points and issues raised during the public hearing.

Mr. Phillips stated that he has studied the purpose and permitted uses in AR-1 and the purpose of Conditional Uses and found nothing related to truck terminals or truck repair.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried four votes to one, with Mr. Ralph opposing the motion, to forward this application to the Sussex County Council with the recommendation that it be denied since the use will not be compatible to the area.

2. RE: C/Z #1249--Braven O. Duffie

No one was present on behalf of this application to amend the zoning map from C-1 General Commercial to MR Medium Density Residential in Lewes and Rehoboth Hundred, located on the northwest corner of the intersection of Route 9 and Ward Avenue, 0.22 mile west of Five Points, to be located on a parcel containing 9,506 square feet more or less.

The Chairman referred back to this application, deferred on January 12, 1995.

The Commission discussed the points and issues raised during the public hearing.

Mr. Schrader advised the Commission that he made inquiries in reference to the need for residential zoning to support mortgage applications.

Mr. Allen stated that this may be considered a form of spot zoning, that the Commission is continually getting accused of spot zoning, that anything the applicant does to upgrade his lot will enhance the area, and that the lot is in the middle of a commercial area.

Mr. Wheatley stated that the rezoning may create similar situations in the future.

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved.

Meeting adjourned at 10:00 PM.